RECENT ENGLISH DECISIONS.

In the Court of Exchequer—Hilary Term.

FURBER *vs.* STURMY.

On an execution in a county court against the goods of the defendant, in a suit of A. *vs.* B., certain goods in the hands of C. were seized, who paid a sum of money to release them, and proeeeded by interpleader. It appeared that the goods originally belonged to B., but previous to the execution had been pawned with a pawnbroker, it did not appear by whom, and the duplicates had been deposited in the hands of C. by L. to redeem them, and hold them as security for the money advanced, who redeemed them accordingly. There was no evidence to show the time at which, or the circumstances under which L. became possessed of the duplicates, or that he had any interest therein: Held, that C. was entitled to the money paid to release the goods.

This was an appeal from the decision of a county court. The defendant having obtained a judgment in that court against one B., execution was issued on the 3d March, 1858, and certain goods in the hands of the plaintiff seized by the bailiff on the 21st April, 1858. The plaintiff, who claimed a right to the goods, paid 34*l.* 4*s.* 9*d.* to the bailiff to release them, and took out an interpleader summons, whereupon an issue was tried between himself and the defendant. In the statement of the case it was found that the goods originally belonged to B., and that the defendant was entitled to the money paid to the bailiff by the claimant, unless the claimant was entitled thereto under the circumstances detailed in the case. The goods had been pawned from time to time with different pawnbrokers, but there was no evidence to show by whom; and on the 15th of April, 1857, the pawnbroking tickets or duplicates were deposited with the claimant by one L., upon the terms that they should be redeemed by him, and, when redeemed, held by him as security for the money advanced in redeeming them, and other moneys, until they could be sold by auction by the claimant, who upon such sale should retain the moneys and expenses of the sale, and pay the balance (if any) over to L. The case also found that there was no legal evidence to show the time at which, or the

circumstances under which, L. became possessed of the duplicates, or that he had any interest therein; but the judge of the county court drew the inference from the facts, and found as matter of fact, that if the goods had been pawned by or with the authority of B., L. had the possession of the duplicates, and deposited them in the plaintiff's hands, as a mere agent of the execution debtor; and that before they were handed over to the plaintiff, or any contract or agreement so to do had been entered into, L. had notice of the issuing of the writ of execution. The plaintiff, after he received the duplicates, redeemed the goods, and for that purpose advanced 192*l.* 11*s.* 4*d.*, and sent them to an auction room for the purpose of selling them, where they were seized by the bailiff. The question was, whether the plaintiff was entitled to the money paid by him to the bailiff. This the county court judge decided against the plaintiff, on the ground of the total absence of legal evidence on his behalf, and gave judgment for the defendant, with costs.

Lush, for the appellant.—The plaintiff, having given value to the pawnbroker for these goods, stands in the position of the pawnbroker, whose lien is an effectual bar to any judgment subsequent to the pawning; and even supposing they could be seized in execution as the goods of B., the lien would prevent any sale under that execution. In *Scott* vs. *Scholey*, 8 East, 467, it was held that a mere equitable interest in a term of years cannot be taken in execution on a fieri facias at the suit of a judgment creditor. *Rogers* vs. *Kennay*, 9 Q. B. 592, seems in point. It was there held, that under an execution against the goods of A., the sheriff cannot seize goods which A. deposited with another person as security for a debt. There, goods in the possession of A. having been taken in execution at the suit of B. and C., and an interpleader issue having been ordered to try whether A. (the plaintiff in the issue) had any property in the goods as against B., (the defendant in the issue), it was held that the issue on the plaintiff's part was maintained by showing a lien on the goods for money due to him from C.

Phipson, for the respondent.—All the facts having been found by the county court judge against the plaintiff, the defendant is entitled to retain the judgment, unless it appears, on the facts

found, that as matter of law he cannot do so. [*Pollock*, C. B.—We must look on the statement sent to us as consisting of a decision accompanied by a special case, and we are to say what conclusion we should reasonably draw from the facts therein stated.] The title of the plaintiff does not depend on that of the pawnbroker, but on that of L., by whom the duplicates were given to him. The onus lies on the plaintiff to make out his title to these goods. [*Martin*, B.—That is the whole question. The plaintiff is in possession of the goods, which puts the onus upon you to show your title.] We do so, for we trace the duplicates to L., whose title does not appear, and it is not shown that the goods were pledged by B., the original owner, or by L. as his agent.

Lush, in reply, admitted that the question was, on whom the burthen of proof lay, and cited *Franklin* vs. *Neate*, 13 M. & W. 431.

POLLOCK, C. B.—We are all of opinion that the appellant is entitled to our judgment, and that the judgment of the judge of the county court must consequently be reversed. I can well understand the principle on which he proceeded—he seems to have thought that the writ bound the property, into whosesoever hands it came, unless it was made out with perfect strictness that some other person was entitled to it. Now, I think that the plaintiff's title to it is sufficiently made out to call on us to give judgment against the defendant. The case as it stands does not in the slightest degree displace the fact of the goods being in the plaintiff's own possession; they were pawned, he receives the duplicates of them, redeems and takes possession of them. Surely he has a right to redeem them, as against the original owner, until he is reimbursed the money advanced to redeem them. We are not to presume anything wrong—all presumptions of law proceed on the principle that every man does right until the contrary appears. If, then, the plaintiff had a lien on these goods against the owner, he had equally a lien on them against any person claiming them under a writ of execution. The shortest way is to dispose of the case on this ground, and waive all inquiry as to whether these goods could have been taken in execution when in the possession of the pawnbroker; in

other words, how far the plaintiff is to be looked on as standing in the position of the pawnbroker.

MARTIN, B.—If the present case had arisen with respect to a sum of money greater than the 192*l.* 11*s.* 6*d.* paid by the plaintiff to redeem the goods, a different question might arise; but as his claim is for a sum considerably less, viz., 34*l.* 4*s.* 9*d.*, he stands in the same condition as the pawnbroker; for by paying this money to the pawnbroker he obtains whatever interest the pawnbroker had, and the question is the same as if the execution had been executed on the goods while in possession of the pawnbroker. The pawnbroker found in actual possession of the goods may have become so either lawfully or not. If lawfully, cadit quæstio; if not, the question is, are any facts disclosed in this case (looking on it either as a special case or a special verdict) showing that the creditor of the execution debtor is entitled to take them in execution? Now, I take it, if you seek to disturb a man's possession, you must show that the party under whom you claim was fairly the owner of the property, and that the presumption from possession is not displaced by merely showing that some other person had once been their owner.

WATSON, B.—Possession of property is prima facia evidence of title. These goods originally belonged to B.; that they were from time to time pawned with different pawnbrokers; and not only is possession in the plaintiff proved, but it does not appear that he obtained it wrongfully in any way; and no claim was ever made by B. to the goods, on the ground that what was done by the plaintiff was not lawfully done. The defendant, however, seeks to meet that case by saying that the plaintiff was bound to go farther, and show how the person who gave him the duplicates became entitled to them, which may have been by virtue of transactions five or six years ago. It would give rise to the greatest difficulties in the world if you were to drive every person to show a complete title in such a case; and here the plaintiff has shown a very strong prima facia one.

CHANNELL, B., concurred.—*Judgment for the appellant.*